U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIE S. WELCOME and U.S. POSTAL SERVICE,
POST OFFICE, Cambridge, MN

Docket No. 00-1236; Submitted on the Record;
Issued April 20, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she was totally disabled on or after August 28, 1996 as a result of her accepted employment injuries of March 18, 1996 or January 9, 1992.

On February 3, 1992 appellant, then a 33-year-old postal distribution clerk, filed an occupational disease claim alleging that she sustained a back condition as a result of sitting on stools, sorting and unloading mail from trucks in the performance of duty. She noted that she first realized her condition was due to her employment on January 29, 1992.[1] The claim was accepted for a temporary aggravation of juvenile discogenic disease.[2] As a result of her work injury, appellant was assigned light duty.[3] She also received compensation for intermittent periods of disability from work from January 30, 1992 through April 27, 1993.

A magnetic resonance image (MRI) scan of the lumbar spine dated February 15, 1992 revealed a central left disc herniation at L5-S1 with posterolateral displacement of the left S1 nerve root and multi-level degenerative disc dehydration compatible with juvenile discogenic disease.

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[1] The Board notes that appellant stated in a statement attached to her CA-2 claim form that she began experiencing back pain in the beginning of January. The Office of Workers' Compensation Programs has repeatedly referred to a January 9, 1992 work injury although appellant filed an occupational disease claim and not a traumatic injury claim. It may be that the date appellant first noticed the onset of her symptoms on January 9, 1992.

[2] In 1985, appellant was diagnosed with a herniated disc at L5-S1 and discogenic disc disease, which was confirmed by a computerized axial tomography scan.

[3] The limited-duty restrictions included no lifting over 10 pounds, 4 to 6 hours, sitting and standing 4 to 6 hours, sitting and standing up to 6 hours, walking 6 to 8 hours, reaching above the shoulders 2 to 3 hours, no climbing of stairs, bending, stooping, twisting, pulling or pushing.

In a February 26, 1992 report, Dr. Charles Burton, a Board-certified neurosurgeon, diagnosed that appellant suffered from a herniated disc, mechanical low back syndrome, juvenile discogenic disease, congenital poor support and mild scoliosis. He prescribed a conservative comprehensive low back program, including an anti-gravitational seating device.

In a report dated June 29, 1992, Dr. Burton stated: "it is clear that [appellant's] present complaints reflect underlying spinal disease, aggravated by the heavy lifting [performed] in [her] work at the [employing establishment]."

In an April 9,1993 report, Dr. Burton indicated that appellant had reached maximum medical improvement. His diagnoses were listed as degenerative disc disease and a herniated disc at L5-S1.

In a (CA-20a) attending physician's report dated April 16, 1993, Dr. Burton noted that appellant suffered from multi-level degenerative disc disease, chronic back and leg pain. He indicated that appellant's present condition was due to a work injury on January 29, 1992.

In a report dated April 18, 1994, Dr. Burton advised that appellant's recent diagnostic studies confirmed extensive multi-level degenerative disc disease with an annular tear and disc protrusion at L5-S1, an annular tear with a high density zone at L4-5, internal derangement of the discs at L2-3, L3-4 and slight internal derangement and annular bulging at L1-2. He recommended conservative treatment including a long-term low back maintenance program and nerve block injections. Dr. Burton further noted that appellant was to be limited to light duty.

The Office apparently closed appellant's occupational disease claim at the end of 1994,[4] and there was no further action in her file until she filed a claim for a traumatic injury on March 19, 1996. Appellant alleged on her CA-1 claim form that on March 18, 1996 she was unloading TV *guides* and magazines when she noticed a pain in the middle of her back that extended to her sides. Appellant received treatment at Cambridge Medical Center from Drs. Steven A. Clark, Bruce Samson and Randall J. Rouse, for chronic low back pain and a thoracic strain.[5] Appellant did not miss any time from work, but she was placed on light duty with detailed lifting restrictions. The Office paid medical benefits and apparently closed the case on April 5, 1996.[6]

In a September 12, 1996 report, Dr. Jerry T. Reese, an orthopedist, indicated that he had performed a fitness-for-duty evaluation on appellant and found her capable of performing limited duty for eight hours per day. He indicated that there was a "combination of work factors and preexisting factors at play" and that it was impossible to completely separate them."

At the request of the Office, appellant was examined by Dr. R.H.N. Fielden, a Board-certified orthopedic surgeon, on November 4, 1996. Dr. Fielden discussed appellant's history of injury and medical treatment between 1992 to 1996. He diagnosed juvenile pattern disc

[4] Appellant also went on maternity leave from work.

[5] Each of these physicians are osteopaths in practice with one another.

[6] Appellant fractured her elbow on September 12, 1996 when she fell from a horse.

degeneration with moderate central protrusion at L5-S1 with temporary aggravation from work activity in 1992. Dr. Fielden stated:

> "Medically, a diagnosed condition of juvenile discogenic disease with bulging of the lumbosacral disc is not connected to her employment, but certainly can be aggravated by certain stressed periodically by the nature of the condition and some of the action in her employment. Unless some new finding occurs, clinically and radiologically following one of these episodes of back pain that would suggest that a physical change had occurred in the underlying condition, then each incident is a temporary aggravation. No such changes have been actually demonstrated and, ... the underlying process does not show any evidence of change."

Dr. Fielden opined that there were no residuals from the employment factors that were affecting appellant's continuing back condition.

In a June 25, 1997 report, Dr. Rouse advised that appellant's maximum shift length should be seven hours per day with a one hour break between; this was designed to act as a work hardening program in an attempt to get appellant back to full duty.

On September 9, 1999 the Office referred appellant to Dr. Richard C. Strand, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a September 28, 1999 report, Dr. Strand discussed appellant's history of injury, medical treatment and symptoms of chronic and recurrent back pain. He reported physical findings and reviewed the results of an MRI scan dated February 1992. Dr. Strand stated:

> "It is my opinion that the juvenile discogenic disease is a preexisting condition and that [appellant's] episodes at work are only temporary aggravations of her basic underlying condition and have not caused a significant increase in her disease state.
>
> "It appears that the temporary aggravations lasted anywhere from two to four weeks, although her disease continued to cause chronic low back pain.
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> "Her current condition is about what I would expect in somebody with this rather significant disease process, in that she does have some loss of function of her lumbar spine and has some chronic pain. She does not need any vigorous treatment at this time...."

Dr. Strand concluded that appellant was not suffering any residuals from her employment-related injuries and that her continuing back condition was due to preexisting juvenile discongenic disease.

In a work capacity evaluation form dated September 28, 1999, Dr. Strand noted that appellant could work eight hours per day with certain restrictions.

In a decision dated October 15, 1999, the Office stated that it was denying appellant's "claim for recurrence of disability" on the grounds that the evidence failed to establish that her disability on or after August 28, 1996 was causally related to the January 9, 1992 work injury. In addition the Office noted that "the temporary aggravation of the juvenile discogenic disease has ceased."

The Board finds that this case in not in posture for a decision.

Initially, the Board notes that the record does not contain a claim for a recurrence of disability as referred to by the Office in its October 15 1999 decision. The last claim filed by appellant was for a traumatic injury that occurred on March 18, 1996. Since appellant did not miss any time from work due to the March 18, 1996 work injury, it is unclear why the Office issued a decision with respect to a recurrence of disability. Furthermore, the March 18, 1996 work injury involved a thoracic strain and not a "temporary aggravation of the juvenile discogenic disease." The condition of temporary aggravation of the juvenile discogenic disease pertained to appellant's original occupational disease claim.

Section 8124(a) of the Federal Employees' Compensation Act[7] and section 10.126 of the implementing regulations,[8] require that final decisions of the Office contain findings of fact and a statement of reasons. A decision denying a claim for benefits should contain a correct description of the basis for the denial in order that the parties in interest will have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.[9] Because the Office's October 15, 1999 decision does not contain a correct description of the basis for the denial of the claim of the findings of fact reached therein, the Board finds that the Office has not fulfilled its responsibility under section 8124 of the Act.

[7] 5 U.S.C. § 8124(a).

[8] 20 C.F.R. § 10.126 (1999).

[9] *Patrick Michael Duffy*, 43 ECAB 280 (1991).

The decision of the Office of Workers' Compensation Programs dated October 15, 1999 is hereby vacated and the case remanded for a *de novo* decision with appropriate findings of fact and conclusions of law.

Dated, Washington, DC
April 20, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member